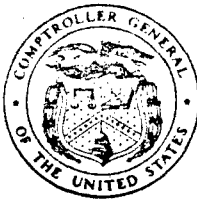


DECISION



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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-198938

DATE: March 4, 1981

MATTER OF: Arnold M. Biddix - [Failure to complete transfer service agreement]

DIGEST: Employee of Federal Aviation Administration who transferred to Alaska at Government expense failed to complete service agreement and separated for reasons not acceptable to agency. Determination whether separation is beyond employee's control and subject to waiver of service agreement is primarily for agency to decide. Our Office will not overturn determination absent evidence it was arbitrary or capricious.

The issue in this case is whether our Office will waive the service agreement that an employee signed prior to his transfer to Alaska at Government expense. We hold that where the agency has not found the reasons for the employee's separation to be beyond his control, we will not overturn such a determination absent evidence that the determination was arbitrary or capricious.

This decision is in response to the appeal by Mr. Arnold M. Biddix of our Claims Division settlement denying his request for waiver of his 24-month service agreement with the Government. Mr. Biddix, a former employee of the Federal Aviation Administration (FAA), signed a 24-month service agreement effective November 8, 1977, in connection with his transfer to Alaska. However, he voluntarily resigned effective October 10, 1978, for reasons which were not acceptable to the FAA for release from his service agreement. The agency has demanded repayment of Mr. Biddix's travel and transportation expenses to Alaska which totaled \$9,392.72.

Our Claims Division settlement denied Mr. Biddix's request for waiver of the service agreement on the basis that a determination as to whether the employee's separation is for reasons beyond his control must be made by the employing agency and our Office will not overturn that determination absent evidence that it is arbitrary or capricious.

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Mr. Biddix argues on appeal that he should have been granted a waiver under agency regulations due to medical problems in his family and due to the fact that other employees were granted waivers by the FAA under similar circumstances. He alleges that the determination by the FAA was arbitrary and capricious since he had nearly completed 1 year of service and since the agency had negligently handled training and other personnel matters during his employment.

Under the provisions of 5 U.S.C. § 5724(d) (1976) employees who transfer to posts of duty outside the continental United States - which pursuant to section 5721(3) includes Alaska - shall be allowed travel and transportation expenses to the extent provided in section 5722. For reimbursement of travel and transportation expenses to such posts of duty the agency shall require the employee to agree in writing to remain in the Government service for a minimum period of 12 months, while for return expenses the employee must serve not less than 1 year nor more than 3 years, unless separated for reasons beyond his control which are acceptable to the agency concerned. See 5 U.S.C. § 5722 (b)(c). See also Federal Travel Regulations (FPMR 101-7) para. 2-1.5a(1)(b).

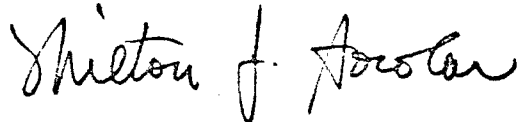
In accordance with FAA regulations, the employee is required to serve 2 years for entitlement to both travel to Alaska and return. This regulation also specifies acceptable reasons for release from the service agreement such as illness, military duty, separation under certain conditions, or retirement. The FAA concluded that Mr. Biddix failed to complete his service agreement for reasons which were not acceptable for release from the agreement.

Our Office has long held that whether an employee's separation from the service is for a reason beyond his control and acceptable to the agency is primarily for the employing agency to decide. In the absence of evidence that such a determination is arbitrary or capricious, our Office will not review such a determination. William C. Moorehead, 56 Comp. Gen. 606 (1977); Richard J. King, B-197104, February 6, 1980; and Richard E. Pozek, B-191081, July 26, 1978.

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On the basis of the record before us, we cannot say that the determination by the FAA was arbitrary or capricious. Mr. Biddix argues that he resigned his position because of family medical problems which could not be attended to in Fairbanks. However, the FAA points out that Mr. Biddix failed to complete training courses essential to his job performance and that he was counseled concerning the possibility of repayment of travel and relocation expenses if he did not complete his employment agreement. The circumstances surrounding Mr. Biddix's separation do not appear to fall within the coverage of the FAA regulations governing waiver of service agreements. Although Mr. Biddix alleges that other employees were granted waivers under similar circumstances, he has not submitted any evidence to that effect. Accordingly, we find no basis upon which to overturn the agency's denial of waiver of the service agreement.

With regard to Mr. Biddix's inquiry about appealing any adverse decision to the courts, he is advised that decisions of the Comptroller General of the United States rendered upon claims settled by the General Accounting Office are conclusive upon the executive branch of the Government. See 31 U.S.C. § 74 (1976). Independent of the jurisdiction of the General Accounting Office, the United States Court of Claims and the United States District Courts have jurisdiction to consider certain claims against the Government if suit is filed within 6 years after the claim first accrued. See 28 U.S.C. §§ 1346(a)(2), 1491, 2401, and 2501.



Acting Comptroller General
of the United States